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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 KEVIN G. BOYD, individually and on
behalf of others similarly situated,

9 Plaintiff,

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11 v.

12 BANK OF AMERICA, N.A.,

13 Defendant.
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C18-1207 TSZ

ORDER

15 THIS MATTER comes before the Court on plaintiff's motions for final approval
16 of class action settlement, docket no. 37, and for attorney fees, costs, and a service award,
17 docket no. 36. Having conducted a virtual hearing on April 2, 2021, about which notice
18 was sent to most, but not all, class members, and at which no class member appeared, and
19 having considered the oral arguments of counsel made during the hearing, as well as the
20 papers filed in support of the pending motions, including the supplemental declaration of
21 Jennifer Mills on behalf of the Settlement Administrator, Rust Consulting, Inc., docket
22 no. 41-1, the Court enters the following order.
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Discussion

In this action, plaintiff Kevin G. Boyd, who was employed as a mortgage broker or lending officer on a commission basis, sued defendant Bank of America, N.A., on behalf of himself and all others similarly situated, for allegedly improper deductions of funds advanced for rest breaks and non-sales work. The parties mediated and reached a settlement. They have agreed to a settlement fund in the amount of \$225,000, which will be used to pay (i) attorney fees (up to 30% of the fund); (ii) litigation costs (\$6,608.13); (iii) a service award to the named plaintiff (\$5,000); and (iv) settlement administration expenses (\$13,500), leaving a net settlement fund of roughly \$132,391 to be allocated pro rata among 391 class members, who are persons with certain job codes employed in Washington by defendant or a related entity from August 12, 2012, to July 7, 2020. *See* Order at 5, ¶ 2 (docket no. 27) (defining the Class for purposes of settlement).

The parties propose to distribute the net proceeds on the basis of “Compensable Weeks,” meaning weeks that class members were “actively employed” by defendant during the class period, but discounting to one-twentieth (1/20th) any Compensable Week that overlaps with the settlement in *Flanagan v. Bank of America, N.A.*, Suffolk County, N.Y. Supreme Court Case No. 613647/2018. *See* Am. Jt. Stipulation of Class Action Settlement & Release at ¶ 49(a) (docket nos. 28 & 29). The parties contemplate that the Settlement Administrator will compute the total number of Compensable Weeks among all class members who have not excluded themselves, and will then divide that figure into the net settlement amount to determine the “Per Week Payment.” *Id.* at ¶¶ 49(b)-(c).

Each participating class member will receive the product of his or her number of

1 Compensable Weeks multiplied by the Per Week Payment, minus income taxes that must
2 be withheld and remitted to the Internal Revenue Service. See id. at ¶¶ 44 & 50.

3 Pursuant to the Minute Order entered December 16, 2020, docket no. 35, notice
4 about the proposed settlement was to be sent to all class members via first-class U.S. mail
5 by January 15, 2021. Along with the notice, each class member was supposed to receive
6 an Adjustment Form through which he or she could dispute the calculation of his or her
7 Compensable Weeks; however, a class member need not have returned an Adjustment
8 Form to receive a share of the settlement funds. See Minute Order at ¶ 1(c) (docket
9 no. 35). Prior to the hearing on April 2, 2021, notices had not been delivered to ten (10)
10 class members, and another eleven (11) class members did not receive notices until
11 shortly before the date for opting out of the Class, objecting to the proposed settlement,
12 and/or returning a completed Adjustment Form. See id. at ¶ 1(e) (setting a deadline of
13 March 19, 2021); Mills Decl. at ¶¶ 13-14 (docket no. 37-2); Mills Supp. Decl. at ¶ 6
14 (docket no. 39). By Minute Order entered April 2, 2021, docket no. 40, the Settlement
15 Administrator was directed to engage in further efforts to serve notice and to advise class
16 members to whom notice was sent on or after February 12, 2021, that the deadline to
17 request exclusion from or object to the proposed settlement and/or submit an Adjustment
18 Form was extended to May 21, 2021.

19 According to the Settlement Administrator, as a result of its additional mailings,
20 no class notices remain undeliverable. Mills Supp. Decl. at ¶ 5 (docket no. 41-1). A total
21 of four (4) individuals have timely opted out of the Class, two (2) class members have
22 challenged the computation of their Compensable Weeks, and no person has submitted an
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1 objection to the proposed settlement. See Mills Decl. at ¶¶ 15-17 (docket no. 37-2); Mills
2 Supp. Decl. at ¶¶ 3, 3(i), & 4 (docket no. 39); see also Mills Supp. Decl. at ¶¶ 6-8 (docket
3 no. 41-1). In light of this information, the Court now ORDERS as follows:

4 (1) Plaintiff's unopposed motion for final approval of class action settlement,
5 docket no. 37, is GRANTED;

6 (2) The Court FINDS that notice was disseminated to all members of the Class
7 and that the notice plan implemented at the direction of the Court provided the "best
8 notice that is practicable under the circumstances," see Fed. R. Civ. P. 23(c)(2)(B), and
9 comported with the requirements of due process.

10 (3) The Court APPROVES the Amended Joint Stipulation of Class Action
11 Settlement and Release, docket nos. 28 & 29, executed by Class Representative Kevin
12 Boyd, defendant Bank of America, N.A., and the attorneys of record (the "Settlement
13 Agreement"), FINDS that the Settlement Agreement memorializes a fair, reasonable, and
14 adequate settlement as to all members of the Class in accordance with Federal Rule of
15 Civil Procedure 23, and DIRECTS that the Settlement Agreement be consummated
16 pursuant to its terms and conditions.

17 (4) The Order entered July 8, 2020, docket no. 27, and the Minute Order
18 entered December 16, 2020, docket no. 35, which together preliminarily approved the
19 class action settlement, are INCORPORATED herein by reference.

20 (5) The claims of each member of the Class that were or could have been
21 asserted in this action are hereby DISMISSED with prejudice, and the release of claims
22 set forth in the Settlement Agreement shall have binding effect, provided, however, that
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1 the four (4) individuals identified by name in Paragraphs 3 and 3(i) of the Supplemental
2 Declaration of Jennifer Mills, docket no. 39, who have opted out of the Class, are not
3 bound by this dismissal or the terms of the Settlement Agreement and shall not receive
4 any of the proceeds of the settlement.

5 (6) Plaintiff's unopposed motion for attorney fees, costs, and a service award,
6 docket no. 36, is GRANTED. Class Counsel Joshua Haffner, Graham Lambert, and the
7 law firm of Haffner Law PC are AWARDED \$67,500 in attorney fees and \$6,608.13 in
8 costs, to be paid from the gross settlement fund. The Court CONCLUDES that the
9 attorney fees and costs are fair and reasonable in light of the work performed, the results
10 achieved, and the nature of the claims asserted. Class Representative Kevin Boyd is
11 AWARDED \$5,000 as a service award, to be paid from the gross settlement fund.

12 (7) The Settlement Administrator is AWARDED \$13,500 for fees and costs
13 incurred and anticipated to complete the administration of the settlement. See Mills Decl.
14 at ¶ 18 (docket no. 37-2). This amount shall be paid from the gross settlement fund.

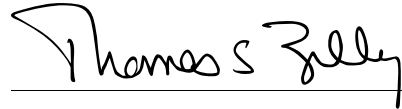
15 (8) In accordance with the Settlement Agreement, the aggregate amount of any
16 checks issued to Class members but not timely cashed¹ shall be paid to the *cy pres*
17 beneficiary, the Legal Foundation of Washington.

19 ¹ The Settlement Agreement does not specify a deadline by which checks must be cashed by
20 Class members. The notice sent to Class members indicated two different dates, namely
21 120 days after issuance of the checks, and 120 days after receipt of the checks. See Ex. A to
22 Mills Decl. (docket no. 37-2). For the sake of clarity, the Court hereby DIRECTS as follows.
23 All checks sent to Class members shall bear the date on which they were mailed, and they shall
prominently indicate that they must be cashed within 120 days of the date printed on the checks.
The *cy pres* beneficiary shall not be paid any residual amount of the settlement proceeds until
after at least 150 days have elapsed since the last check was mailed to a Class member.

1 (9) The Clerk is directed to send a copy of this Order to all counsel of record
2 and to CLOSE this case.

3 IT IS SO ORDERED.

4 Dated this 4th day of June, 2021.

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7 Thomas S. Zilly
8 United States District Judge
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